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Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-339

BUFFALO FORGE COMPANY, *Petitioner,*

v.

UNITED STEELWORKERS OF AMERICA, ET AL., *Respondents.*

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF OF BITUMINOUS COAL OPERATORS' ASSOCIATION, INC., AMICUS CURIAE

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The Bituminous Coal Operators' Association, Inc., respectfully files this brief *amicus curiae,* with the written consent of all parties, pursuant to Rule 42 of the Rules of the Supreme Court.

I

INTEREST OF THE BITUMINOUS COAL OPERATORS' ASSOCIATION

The Bituminous Coal Operators' Association, Inc., (hereinafter referred to as BCOA) is a voluntary non-profit association of bituminous coal mine operators. It was established in 1952 out of an effort to bring a

degree of stability to the labor-management relations chaos and to end the lengthy and bitter strikes that had long characterized the coal industry. Since that time, BCOA has continued to exist for the purpose of negotiating periodic labor agreements with the United Mine Workers, aiding its members in interpreting these agreements and devising and strengthening mechanisms for bringing about industrial peace in the coal industry.

BCOA membership is open to any bituminous coal producing company. All of its members are signatories to the National Bituminous Coal Wage Agreement. Its membership includes both individual coal companies and state and local coal associations. The direct and indirect members of BCOA are located throughout the coal mining areas encompassing all of the coal producing states, and collectively produce at least 65 percent of the bituminous coal produced in the United States.

BCOA, therefore, has a continuing interest in preserving and strengthening the contractual procedures for resolving grievances and disputes and in bringing industrial peace to the coal fields.

The decision of the court below, if allowed to stand, tends to weaken the efficacy of contract grievance-arbitration procedures generally, and could contribute to a further proliferation of the wildcat strikes that are threatening to undermine the stability and continuity of production in the coal mine industry and endanger the Nation's supply of fuel. The decision below is contrary to the decisions of other Courts of Appeals in coal mining cases, and if allowed to stand and if given broad application, could impinge directly and disastrously on BCOA's two major concerns—the stability of labor relations in the coal industry and the continued ability of the coal industry to meet this Nation's increasing energy needs.

II

QUESTION PRESENTED

Whether a federal court may, under Section 301 of the Labor-Management Relations Act of 1947, order arbitration and enjoin a work stoppage occasioned by the refusal of members of Union A to cross a picket line established by Union B, where Union A has an agreement with the employer containing a grievance-arbitration procedure for the settlement of disputes and containing an express or implied agreement not to strike.

III

STATEMENT OF THE CASE

A. The Instant Case

The issues in this case arose when Respondent labor unions directed their members (production and maintenance employees) to honor lawful picket lines established by other labor unions representing the Company's office clerical and technical employees.

Section 14b of the labor agreement between the Company and its production and maintenance employees contained a provision prohibiting "strikes, work stoppages or interruption or impending of work", and Section 26 established a grievance-arbitration provision for the resolution of "differences . . . as to the meaning and application of this Agreement, or . . . any trouble of any kind . . . in the plant. . . ."

The Court of Appeals, on May 1, 1975, affirmed the District Court's refusal to issue a preliminary injunction, on the ground that such relief was precluded by Section 4 of the Norris-LaGuardia Act.

B. Recent United Mine Workers Litigation

Only recently, this Court has denied two United Mine Workers' Petitions for Certiorari in cases where work stoppages over the presence of stranger pickets have been enjoined and arbitration ordered under the National Bituminous Coal Wage Agreement. *United Mine Workers of America* v. *Island Creek Coal Company,* No. 74-1573; *United Mine Workers of America* v. *Armco Steel Corporation,* No. 75-1574.

In *Island Creek,* miners from other UMWA local unions, protesting an arbitrator's decision at the Company's No. 2 mine, picketed out employees at other Company mines. In *Armco,* widespread work stoppages occurred at coal mines throughout the State of West Virginia due to the presence at the mines of coal miners protesting the Governor's regulation of gasoline sales during the national oil crisis in 1974.

The National Bituminous Coal Wage Agreement contains elaborate grievance-arbitration procedures for the final and binding settlement of safety disputes and "differences . . . as to the meaning and application of the provisions of this Agreement, . . . differences . . . about matters not specifically mentioned in this Agreement, or . . . any local trouble of any kind . . . at the mine. . . ."[1]

In these cases, the Courts of Appeals for the Third and Fourth Circuits concluded that the refusal of coal miners to cross stranger picket lines was an ar-

[1] The provisions of the current labor agreement are identical, in this respect, with those of the 1968 labor agreement considered in *Gateway Coal Co.* v. *United Mine Workers,* 414 U.S. 368, and those of the 1971 labor agreement considered in *Armco* and *Island Creek.*

bitrable issue under the National Bituminous Coal Wage Agreement, and that district courts were empowered to order arbitration and to enjoin such work stoppages under Section 301 of the Labor-Management Relations Act.[2]

C. The Roving Picket Phenomenon in the Coal Industry

This matter is of the gravest concern to BCOA because of the high incidence of wildcat strikes in the coal industry. In the first nine months of 1975 alone, UMWA members engaged in more than 2,000 unauthorized work stoppages under the National Bituminous Coal Wage Agreement and lost more than 1.1 million man-days of work, $61 million in wages and $16 million in employer contributions to their pension and benefit trust. The industry and Nation lost 11 million tons of coal.

In terms of man-days lost, these nine-month losses already exceed the losses for *all* of 1974, which was itself the worst year to that time for wildcat strikes in the modern history of the industry.

[2] The Court of Appeals for the Seventh Circuit reached an identical result in *Inland Steel Co.* v. *United Mine Workers,* 505 F.2d 293, a case involving the picketing out of coal mines by roving miners from other mines protesting the Pay Board's refusal to approve the full amount of a pay increase. No petition for writ of *certiorari* was filed in this case by the Mine Workers.

Losses since 1970, as reported by BCOA members, reflect an alarming increase in the pattern of illegal work stoppages throughout the Nation's coal fields:

	Man-days Lost	Pay Roll Loss	Tonnage Loss	Pension & Benefit Trust Fund Loss
1970	593,000	$21,459,000	11,389,000	$ 4,555,000
1971	565,000	21,981,000	8,762,000	3,739,000
1972	516,000	21,783,000	8,372,000	5,023,000
1973	529,000	26,298,000	7,043,000	4,817,000
1974	1,023,000	53,819,000	11,686,000	10,509,000
1/1/75-9/30/75	1,113,000	61,708,000	11,750,000	16,871,000

These losses are the product of two tragic United Mine Workers' traditions, frequently working in tandem. The first is the "wildcat strike", a work stoppage, not authorized by either the International Union or officials of the UMWA District or local union, which halts production at a mine or mines, usually for one day or more, over an arbitrable issue. Typically, the work stoppage results from the tacit agreement of members at a particular mine to "honor" the decision of a single miner to withhold his services. Traditionally, that decision is signaled when the disgruntled miner spills out his drinking water.

The close proximity of coal mines to one another in many coal producing areas fosters the second UMWA tradition, the "roving picket". It is a notorious fact throughout these coal producing regions that the mere presence of a single picket at or near a coal mine has long been enough to cause a complete shutdown of the mine. Roving pickets have long followed a familiar pattern of going from mine to mine shutting them down because of a single grievance at a particular mine that

could be resolved readily by peaceful arbitration under the contract. The identity of the picket and the reason for his presence at the mine are both wholly immaterial to the virtually foreordained "decision" of the UMWA members at the picketed mine to refuse to work.[3]

The roving picket phenomenon in the coal industry alone is responsible for the greatest portion of the annual losses sustained both by labor and management. In August, 1975, more than 500,000 man-days and $31,000,000 in wages were lost when roving miner pickets brought coal production in West Virginia and neighboring coal regions in Virginia, Kentucky and Ohio to a halt for several weeks, over a dispute stemming originally from the discharge of a local union president. At the same time, virtually all the mines in Illinois (UMWA District 12) were shut down for an extended period by wildcat strikes over some other ostensible issue relating to rotation of shifts, an issue dealt with specifically in the 1974 labor agreement.

Five months earlier, in March and April, 1975, more than 200,000 man-days were lost when roving miner pickets closed mines in Ohio and northern West Virginia for several weeks, over a dispute at the mines of a single Company as to the meaning and application of a new contract provision. And, one year earlier, in February, 1974, more than 200,000 man-days similarly were lost when miner pickets fanned out through the coal fields of West Virginia to close mines in protest of the Governor's gasoline rationing program. It was

[3] In a number of UMWA districts, there exists yet another tradition. The "24-hour rule", which dictates that the first shift to go out on strike shall be the first to return to work, compounds losses particularly those occasioned by the wildcat strike of short duration.

this episode which ultimately led to the Court of Appeals decision in *Armco,* holding the strikes to be enjoinable.

IV

ARGUMENT

The Decision of the Court Below Conflicts with Fundamental Principles of Labor Law and Policy Established by the Court

The decision below clearly is incorrect and inconsistent with decisions of this Court in the *Steelworkers Trilogy,* 363 U.S. 564, 574 and 593 (1960), *Boys Markets, Inc.* v. *Retail Clerks Union,* 398 U.S. 235 (1970) and *Gateway Coal Company* v. *United Mine Workers,* 414 U.S. 368 (1974).

Those decisions make it abundantly clear that nothing is more basic to the national labor policy than the principle of fostering industrial stability by voluntary settlement of labor disputes without resort to self-help and industrial strife. Indeed, Section 203(d) of the Labor-Management Relations Act of 1947, 29 U.S.C. § 173(d), manifests the Congressional resolve that:

> "[f]inal adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement. . . ."

Basic to this policy is the strong presumption favoring arbitration of labor disputes, unless specifically excluded by the terms of the grievance-arbitration provisions. As the Court stated in *Steelworkers* v. *Warrior & Gulf Navigation Co.,* 363 U.S. 574, 582-3 (1960):

> "An order to arbitrate the particular grievance shall not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage."

Ten years after the *Steelworkers Trilogy,* this Court, in *Boys Markets,* gave further expression to the principle favoring arbitration of labor disputes and held that a federal court may compel arbitration and enjoin a work stoppage over an arbitrable grievance.

The Court below, while recognizing *Boys Markets,* nevertheless was so blinded by the "over a grievance" language that the critical finding—whether the picket line dispute is or is not arbitrable under the grievance-arbitration procedures of the particular contract—was never made. The Court never so much as referred to the contract provision, which specifically makes arbitrable not only traditional contract disputes but also "any trouble of any kind" (Petition, p. 13a). Had it done so, the Court below, we submit, (if its decision were to be consistent with the rulings of this Court) would have had to conclude, as did the Courts of Appeals in *Armco* and *Island Creek Coal,* that the employees' refusal to cross the picket lines was arbitrable.

Indeed, as pointed out by the Court of Appeals in *Island Creek Coal,* 507 F.2d at 653, the issue which the employer in the § 301 suit seeks to compel the employees to arbitrate—the right of the employees under the contract to refuse to cross the picket line—is precisely the same issue which would be arbitrated in a subsequent disciplinary proceeding against the employees involved.

To hold, as did the Court below, that the issue "is not over a grievance with Buffalo Forge"[4] is to give judicial sanction to a union's avoidance of bargained-for no-strike pledges. Such withholding of effective judicial relief in an entire category of premeditated work stoppages "not only runs directly counter to our national policy of promoting labor stablility but opens new and hazardous avenues in labor relations for unrest and strikes." *Gateway Coal Co.* v. *United Mine Workers,* 466 F.2d at 1162 (Rosenn, M., dissenting).

V

CONCLUSION

In the interest of stability of employment and adherence to labor agreements in industry at large, including the energy-critical [redacted] coal mining industry, we urge that the decision of the Court below be reversed.

Respectfully submitted,

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[4] Petition, p. 7a.